IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Appeal From Order No. 5 of 2004
(Old No.641 of 1996)

Smt. Manjit Kaur W/o Late Sri Avtar Singh
R/o Village Vikrampur
Tehsil Baspur
District Nainital

…Appellant

Versus

The New India Insurance Company
Branch Haldwani
District Nainital .. Respondents

Sri Sudhir Singh, learned counsel for the appellant.
Sri R.B. Aggarwal, learned counsel for the respondent

Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

The present appeal arises out against the order dated 19.09.1996 passed by Motor Accident Claims Tribunal / IIIrd Additional District Judge, Nainital (for short 'Tribunal') in Misc. Case Nos. 128 of 1994 and 129 of 1994 whereby the Tribunal concerned rejected both the cases holding that they were filed beyond the period of limitation.

2. Brief facts giving rise to this appeal are that the appellant/claimant filed M.A.C.T. petition for compensation for the death of her husband – Avtar Singh in motor accident before the learned Tribunal. The Tribunal registered it as Misc. Case No. 128 of 1994 being filed beyond the period of limitation. The Tribunal concerned invited objections from the opposite parties on the point of limitation. The petitioner filed written submissions stating that the petitioner No. 2 was the minor at the time of accident and is still minor and claimed that they are entitled to the benefit of section 7 of Indian Limitation Act.

4. The insurance company also filed objections in the Misc. Case alleging that copy of any application for condonation of delay has not been supplied to it; that no sufficient ground for condonation of delay in filing the claim has been given by the claimants and that they were not entitled to special provisions of Limitation Act as the same were omitted by U.P. Amending Act No. 54 for 1994.

5. Learned Tribunal heard Misc. Case Nos. 128 of 1994 and 129 of 1994 together on the point of limitation and held that the petition of the appellant was filed together with the minor and hence, they wee not entitled to the benefit of Section 7 of the Indian Limitation Act. Therefore, the Tribunal rejected both the misc. cases holding that they have been filed beyond the period of limitation.

6. Feeling aggrieved from the aforesaid impugned order, the appellant has filed this appeal before this Court mainly on the ground that the claim petition was filed after 14.11.1995 when the Amending Act No. 54 of 1994 deleting the period of limitation under Section 166 (3) of the Motor Vehicle Act had already come in force, hence, no period of limitation applies in the case of appellants; that the appellant could not move the claim within time as the claimant No. 2 is still minor while claimant Smt. Manjit Kaur – widow was not aware about the provisions of compensation under the Motor Vehicle Act and that the learned Tribunal failed to appreciate that the claim petition for compensation should not be bogged down on highly technical reasons specially when the appellants were otherwise entitled to get compensation from the opposite parties.

7. We have heard learned counsel for both the parties and perused the record.

8. Learned counsel for the appellant has raised the argument that the impugned judgment passed by the Tribunal concerned is against the provisions of law. He has submitted that the Tribunal has dismissed the petition by interpreting the provisions of the Motor vehicle Act in an arbitrary manner.

9. Our attention has been invited towards the decision of the Apex Court by the learned counsel for the appellant cited in ***(1996) 4 Supreme Court Cases 652, Dhannalal Vs D.P. Vijayvargiya & others*** and learned counsel for the appellant has stressed that on the basis of the aforesaid decision, the Tribunal did not have any jurisdiction to dismiss the petition only on the ground of it is being beyond limitation.

10. We have gone through the Ruling cited before us, the Hon'ble Apex Court in this ruling has clearly observed that *"in view of the amending act, the claimant became entitled to file claim petition, even after the period of limitation as expired as the period of limitation has been deleted. Therefore, the claim petition, which has been filed and is being pursued before the court cannot be thrown out on the ground of limitation."*

11. In the instant case, the accident took place on 15.09.1988 and the claim petition was filed on 12.12.1994. Therefore, it is true that his claim petition was filed after about six years of the accident but Sub Section (3) of Section 166 of the Act has been omitted by Section 53 of the Motor Vehicle (Amendment) Act, 1994 which came into force w.e.f. 14.11.1994. The effect of Amending Act would be that w.e.f. 14.11.1994, there is no limitation for filing claims before the Tribunal in respect of any Accident. In case, now if Sub-Section (3) of Section 166 has been omitted, then the Tribunal has no option except to entertain the claim petition without taking note of the date on which such accident had taken

place and the claim petition cannot be thrown out on the ground that such claim petition is barred by time.

12. In view of the aforesaid discussion as well as the law enunciated by the Apex Court, we are of the view that the learned Tribunal was not justified in dismissing the claim petition of the appellant –Smt. Manjit Kaur.

13. We accordingly allow the appeal has set aside the impugned judgment and order dated 19.09.1996 passed by Motor Accident Claims Tribunal / IIIrd Additional District Judge, Nainital and the matter is remanded back to the M.A.C.T. concerned for disposal.

14. As the matter is quite old, therefore, we direct the Tribunal concerned to decide the claim petition within a period of six months in accordance with law.

(B.C. Kandpal, J.) **(M.M. Ghildiyal, J.)**

15.02.2006
ASWAL